IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

MFA.No. 1555 of 2001()

WCC.306/1994 of W.C.C.,KOZHIKODE
.....

APPELLANT:

BASHEER.K.P., S/O.HYDROS,
KURUNGOTTU POYIL, NADUVANNOOR, KOYILANDY,
KOZHIKODE DIST.

BY ADV. SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENTS:
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1. KADAKKATHOZHIL GANGADHARAN,
S/O.KRISHNAN NAIR, NADUVANNUR,
KOYILANDY, KOZHIKODE.

2. M/S.UNITED INDIA INSURANCE CO. LTD.,
BRANCH NO.10, MAVOOR ROAD, KOZHIKODE-673 004.

BY ADV. SRI.M.S.PATTALI
SRI.T.VINOD KUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 1555 OF 20O1

Dated this the 19th day of December, 2007

JUDGMENT

Koshy, J.

Appellant-applicant was working as a cleaner-cum-loading and unloading worker in a lorry with registration No.KL/11/A/1467. When the lorry was taken for loading goods from the quarry, a blasting of rock was taken place and a piece of rock few out and hit on the head of the applicant, as a result of which he suffered depressed fracture of right frontal bone (fragments seen), bloodstained C.S.F leak and brain matter coming out through the wound. He was taken to National Hospital, Kozhikode. The discharge summery issued from the hospital was marked as Exhibit A3 which reads as follows:

> "Patient sustained injury over the right forehead due to a flying stone. No LOC, fits, vomiting. No history of DM or HT.
>
> O/E Conscious,
> talking oriented,
> Pupils normal,
> Moves all limbs,
> No focal deficts,
> P 80/mt BP 110/7mmHg
> Right forehead injury - depressed frature fragments
> seen - blood stained CSF leak - brain matter coming
> out through the wound.

Investigations:

X-ray skull - Depressed # right fronytal bone.

CT-Scan - Depressed # right frontal bone. No intracerebral clots.

Treatment: On 11-02-1994 under general anaesthesia the original wound was extended and depressed fragments were excised. There was a dural defect on 5cm x 3cm. Duraplasty done with frontalis fascia. Wound closed in layers. Post-operative period uneventful. Sutures removed on 18-02-1994. Wound has healed well. Discharged in good condition.

A O D:
1. Tab. Eptoin 1-0-1.
2. To come for review on 04-03-1994."

The hospital also issued Exhibit A4 certificate showing 100% loss of earning capacity which reads as follows:

"This is to certify that Shri.K.P.BASHEER, S/o.Hydros, aged 27 Yrs, residing at Karungottupoyil, in Naduvannoor of Kozhikode District is under my treatment from 11/02/1994 to this date. He had compound depressed fracture of right frontal bone with dural laceration and brain fungus.

He had undergone excision of depressed fracture with Duraplasty. He has defect in skull bone in (R) frontal region 4 cm x 2 cm. He shall be very careful in future that no injury happens n or near to the location of the present injury, which would be fatal. Mr.Basheer is unfit to work as a loading and unloading worker and he shall not carry weight on his head. He has facial disfigurement due to the injury which can be corrected by bone graft.

As far as loading and unloading work is concerned his disability is 100%."

This was followed by a certificate issued by the Medical Board which states that he will be unable to continue the occupation of loading and unloading work and he is physically handicapped. But the Commissioner has taken only 50% of the loss of earning capacity. Section 4(1)(c)(ii) of the Workmen's Compensation Act clearly states that when the injury is not a scheduled injury, the Commissioner has to assess the loss of earning capacity on the basis of the medical practitioner's certificate. Loss of earning capacity is different from physical disability. Apart from the above, there is disfiguration also and as per Part-1 of Schedule-1 of the Workmen's Compensation Act, for severe facial disfiguration also, loss of earning capacity is 100%. In any event, medical certificate shows that he is totally unable to do any work and earning capacity is completely lost. Even though he was earning a higher amount, since the accident occurred before the amendment of the Workmen's Compensation Act, only Rs.1,000/- was taken as the monthly wages and compensation was awarded for 50% disability, amounting to Rs.54,228/-. Since we have found that the Commissioner ought to have granted compensation for 100% disability, he is entitled to another Rs.54,228/- with 6% interest from the date of application till the date of deposit. The additional amount of Rs.54,228/- with

interest at 6% should be deposited by the third respondent Insurance Company. The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1555 OF 2001

JUDGMENT

19.12.2007